

file

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF

JAMES SCHOCH,

Appellant,

v.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Respondent

PCHB No. 86-167

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
ORDER

THIS MATTER, the appeal of order DE 86-C132 revoking appellant's well drilling license, came on for hearing before the Board on May 7, 1987, at Yakima, Washington in the afternoon. Seated for and as the Board were Judith A. Bendor, Lawrence J. Faulk, Chairman, and Wick Dufford (presiding). WDOE elected a formal hearing. Malinda Avery of Jackie Adkins and Associates officially reported the proceedings.

Appellant represented himself. Respondent agency was represented by Assistant Attorney General, V. Lee Okarma Rees.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. Argument was heard. From the testimony, evidence and
3 contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I.

6 Appellant is a water well drilling contractor who performs the
7 construction and maintenance of water wells for compensation. He is
8 based in Yakima.

9 II.

10 The Washington State Department of Ecology (WDOE) is an
11 environmental management and regulatory agency empowered to license
12 well drillers and monitor that industry under authority of Chapter
13 18.104 RCW and Chapter 173-160 WAC.

III.

15 In April 1986, Mr. Schoch deepened and widened an existing well
16 for Mr. Frank Blackburn of Yakima, Washington. The original well was
17 about 36 inches in diameter and 10-12 feet deep. At the time Schoch's
18 efforts were completed, the well was approximately 20 feet in depth.
19 During construction the annular space of this well was backfilled with
20 soil and gravels which were dug from the well.

21 A DOE hydrogeologist conducted two inspections of the site in
22 mid-April. He observed the backfilling of the annular space. He also
23 observed a pump in place and operating for irrigation.

24
25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-167

(2)

1 His researches of the agency files showed that no well log (water
2 well construction report) had been submitted, that the no water rights
3 permit had been obtained for the enlarged well; and that Mr. Schoch's
4 well driller's license had expired.

5 IV.

6 On April 23, 1986. WDOE wrote a letter to Mr. Schoch indicating
7 that he had failed to renew his well drilling license and as a result
8 his license was revoked. It went on to say "If you continue to dig
9 wells without a license, administrative action could be taken against
10 you."

11 V.

12 On May 16, 1986. WDOE issued Order No. DE 86-435, which in
13 pertinent part, reads as follows:

14 In April of 1986 a well was constructed by Mr. James Schoch for
15 Mr. Fred Blackburn on property located within the SE 1/4 of the NW
16 1/4 [Sec.5] T. 12 N., R. 18 E.W.M. During construction the
17 annular space of this well was backfilled with soil and gravels
18 which were dug from the well. This is in violation of WAC
173-160-180 which mandates that in dug wells, to effectively seal
the annular space between the undisturbed native material and
upper well hole the sealing material will be concrete at least 6
inches thick.

19 In view of the foregoing and in accordance with the provisions of
20 RCW 43.27a.190:

21 IT IS ORDERED that Mr. James Schoch and Mr. Fred Blackburn take
appropriate action in accordance with the following instructions:

22 Mr. James Schoch (driller) and Mr. Fred Blackburn (owner) must
23 within thirty (30) days of receipt of this letter engage a
24 licensed well driller to correct the deficiencies of the
above-mentioned well. Notification of the Central Regional Office
of the Department of Ecology at least five (5) days prior to any

25
26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-167

(3)

1 work beginning is required. After the work has been completed Mr.
2 Schoch and Mr. Blackburn shall notify the department and submit a
Water Well Report as required by WAC 173-160-050 and RCW
18.104.050.

3 The well shall be modified to conform with the requirements of WAC
4 173-160-180(1). The annular space shall be sealed with at least 6
5 inches of concrete to a depth of at least 18 feet or within three
6 (3) feet of the bottom of the well if the well is less than 21
feet deep. The concrete seal shall extend a minimum of 6 inches
above the surface of the ground.

7 This order was never appealed by appellant.

8 VI.

9 On May 30, 1986, the appellant, Mr. Schoch, requested a variance
10 from the requirements stated in Order No. DE 86-435. The letter
11 indicated that to comply with the order would defeat the purpose of
12 this shallow surface well. He suggested two alternatives: (1) that
13 a slab of concrete be poured on the ground around the outside of the
14 casing to seal the well and prevent pollutants from entering the well;
15 or (2) that he be allowed to dig out the annular space to a depth of
16 six feet and fill this space with concrete and then place a slab on
17 top of the ground.

18 VII.

19 On June 6, 1986, WDOE's inspector responded to the request by a
20 letter which, in pertinent part, reads as follows:

21 Proposal two (2) of the request will be an acceptable
22 alternative for the construction of the well, if the following
conditions are met:

- 23 1. The concrete curbing shall be at least six (6) inches thick
24 around the well casing to a depth of not less than six (6)
feet.

2. The surface slab shall be a minimum of ten (10) feet square and four (4) inches thick with the well casing centered in the slab.
3. The surface slab and concrete curb shall be completed in one continuous pour.
4. The construction of this slab and curb shall meet all building codes as required by the county.
5. I must be contacted at least five (5) days prior to pouring of the concrete so I can inspect work in progress.

If you accept the following conditions, all work must be completed within thirty (30) days of receipt of this letter.

Also on June 6, 1986, WDOE wrote another letter to Mr. Schoch which, in pertinent part, read as follows:

I have received and reviewed the request for a variance of the construction standards on a well dug by you for Mr. Fred Blackburn. I have responded to that request under a separate cover.

Ecology has granted a variance for the well noted above. This variance does not allow you to construct other wells utilizing the same methods. Each well must be considered on an individual basis. It is highly unlikely that any future variances will be granted.

I would advise you to ask for water right permits prior to constructing any future wells. This would eliminate many of the problems which you encountered on this project.

You must submit a water well construction report to this office when the construction on this well is completed. I have enclosed the form for your use.

VIII.

Mr. Schoch paid the fees necessary to reinstate his license until June 24, 1986. He apparently did not take the appropriate steps to renew it beyond that time. However, all that then prevented his

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-167

(5)

1 keeping the license current was the payment of appropriate fees.

2 Neither earlier nor during the 30 days following DOE's variance
3 approval of June 6, 1986, did Schoch perform the corrective work
4 around the well's annular space which DOE had required.

5 IX.

6 On August 15, 1986, WDOE issued Order No. DE 86-C132 which, in
7 pertinent part, reads as follows:

8 In April of 1986, Mr. James Schoch constructed a well for Mr.
9 Frank Blackburn of Yakima, Washington. The "dug well" was
10 constructed within the SE 1/4 NW 1/4, Section 5, Township 12 N.,
11 Range 18, E.W.M.

12 The annular space of the well was filled with soil and gravels.
13 This is in direct violation of WAC 173-160-180.

14 No well log has been submitted for this well which is in violation
15 of WAC 173-160-050 and RCW 18.104.050.

16 Order No. DE 86-435 which was issued for the repair and
17 modification of this well has not been complied with.

18 RCW 18.104.110 reads in part: In cases other than those relating
19 to the failure of a licensee to renew a license, any license
20 issued hereunder may be suspended or revoked by the director for
21 any of the following reasons:

- 22 1. For fraud or deception in obtaining the licence;
- 23 2. For fraud or deception in reporting under RCW 18.104.050;
- 24 3. For violating the provisions of this chapter, or of any lawful
25 rule or regulation of the department or the department of
26 Social and health Services.

27 In view of the foregoing and in accordance with the provisions of
RCW 18.104.110:

IT IS ORDERED THAT license number 0633 belonging to James Schoch
be revoked upon receipt of this order.

1 X.

2 Feeling aggrieved by this order, appellant appealed to this Board
3 on September 18, 1986. Mr. Schoch argues that he didn't do the repair
4 work because the well was abandoned and he didn't see any reason to
5 complete an abandoned well. We note, however, that the well wasn't
6 abandoned until after the 30-day period DOE had provided for
7 compliance with its order.

8 Schoch also stated that the work was not done because he and Mr.
9 Blackburn were arguing over who should pay for it.

10 XI.

11 Any Conclusion of Law which is deemed a Finding of Fact is hereby
12 adopted as such.

13 From these Findings of Fact the Board comes to these

14 CONCLUSIONS OF LAW

15 I.

16 The Board has jurisdiction over these persons and this matter.
17 Chapters 18.104 and 43.21B RCW.

18 II.

19 RCW 18.104.030 makes it unlawful:

20 (1) For any water well contractor to construct a water
21 well for compensation without complying with the licensing
provisions of this chapter:

22 (2) For any water well contractor to construct a water
23 well for compensation without complying with the rules and
24 regulations for water well construction adopted pursuant to this
25 chapter.

26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-167

(7)

II.

Under the terms of RCW 18.104.040 WDOE has certain powers and duties, among which are:

- (1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter. . . .
- (2) To enter upon lands for the purpose of inspecting any well, drilled or being drilled, at all reasonable times;
- (3) To call upon or receive professional or technical advice from any public agency or any person;
- (4) To make such rules and regulations governing licensing hereunder and water well construction as may be appropriate to carry out the purposes of this chapter. Without limiting the generality of the foregoing, the department may in cooperation with the the department of social and health services make rules and regulations regarding:
 - (a) Standards for the construction and maintenance of water wells and their casings;
 - (b) Methods of sealing artesian wells and water wells to be abandoned or which may contaminate other water resources;
 - (c) Methods of artifical recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations.

III.

RCW 18.104.110, in pertinent part, reads as follows:

In cases other than those relating to the failure of a licensee to renew a license, any license issued hereunder may be suspended or revoked by the director for any of the following reasons. . . .

- (3) For violating the provisions of this chapter, or of any lawful rule or regulation of the department or department of social and health services.

IV.

RCW 18.104.060 provides, in pertinent part:

Notwithstanding and in addition to any other powers granted to the Department, whenever it appears to the director, . . . that a person is violating or is about to violate any of the provisions of this chapter, the director, . . . may cause a written regulatory order to be served upon said person The order shall specify the provision of this chapter and if applicable, the rule or regulation adopted pursuant to this chapter alleged to be or about to be violated . . . and shall order the act constituting the violation . . . to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. . . .

V.

DOE's regulatory order (No. DE 86-C132) specified that WAC 173-160-180 had been violated. That section, in pertinent part, reads as follows:

The surface curbing of all dug wells shall be constructed to effectively seal the annular space between the undisturbed native material of the upper well hole and the concrete tile, steel pipe or liner to a depth of at least 18 feet or within 3 feet of the bottom in wells that are less than 21 feet in depth.

VI.

We conclude that the backfilling of the annular space with soil and gravels was a violation of WAC 173-160-180. This violation supported the issuance of the regulatory order (DE 86-435) of May 16, 1986, which was not appealed. It also is sufficient to sustain the license revocation order (DE 86-C132) of August 15, 1986.

VII.

Mr. Schoch's argument urging the uselessness of doing the repair is not convincing.

As a licensed driller he should have known how to construct the well properly in the first place. Moreover, the time allowed for doing the repairs had expired before the well was abandoned.

Finally, a driller's disputes over payment with a well owner cannot serve as an excuse for the driller's failure to comply with the law which the licensing program is designed to implement.

VIII.

DOE's action in this case shows a reasonable exercise of prosecutorial discretion. It did not seek to revoke the license when the violation was first discovered, but rather attempted to get the problem corrected. It then agreed to an alternative means of correction. Only when the work was not completed within the 30 days provided after the variance was granted did the agency determine that revocation was appropriate.

Under the terms of the statute, Mr. Schoch may not apply for a license for one year from the date of this decision. RCW 18.104.110, 130.

IX.

Any Finding of Fact which deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law the Board enters this

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-167


ORDER


DE 86-C132 is affirmed.

DONE this 16th day of June, 1987.

POLLUTION CONTROL HEARINGS BOARD

 6/16/87
LAWRENCE V. FAULK, Chairman


WICK DUFFORD, Presiding


JUDITH A. BENDOR, Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PCHB No. 86-167

(11)